

20044035E

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508
Cincinnati, OH 45201

Date:
APR 29 2004

Employer Identification Number:

UIL 501.00-00

Person to Contact - I.D. Number:

Contact Telephone Numbers:

Phone

FAX

Dear Sir:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

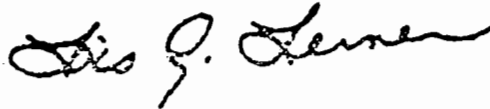
DR-056-2004

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Issue:

Does the applicant, who was formed to purchase equipment and then lease said equipment to a related organization currently exempt under section 501(c)(7) of the Internal Revenue Code, qualify for exemption under section 501(c)(3) of the Code?

Facts:

You were incorporated in the _____ on _____.

Article III, section 5 of your Articles of Incorporation states:

Article I, section 1 of your bylaws states

Your Form 1023 application states, in part:

_____ was organized by area residents to help support the not for profit, community _____
This foundation was formed to solicit contributions from businesses and individuals to purchase equipment of approximately \$_____ a year for five years. This equipment would then be leased to the golf course at a nominal amount. The golf course is a necessary community recreational facility for the area residents. We have a number of manufacturing plants, medical facilities and other businesses in this area that are needing additional employees. The golf course is a needed recruiting tool to bring people to the area and to help the community retain existing residents through the provision of community recreational facilities.

Your letter dated February 17, 2004 indicates that the country club owns and operates the golf course which consists of a nine-hole course and a clubhouse.

Your letter also states that no financial support will be provided to organizations not exempt under IRC 501(c)(3). In addition, your letter states you were organized to assist in maintaining the economic viability of the country club as an integral component of the

recreational opportunities in the community of

Your letter re-affirms that your primary activity will consist of acquiring equipment and leasing it to the country club as a means of providing it with a source of equipment to maintain its operation, which would otherwise not be available to it.

In response to your fundraising program, you state on the application that the board of directors has been assigned key businesses in the area from which to request donations and pledges of \$ to \$ per year for years. Once the applicant has received the commitments from these businesses, the second step is to ask for donations and pledges from the community at large through a brochure.

The brochure submitted with the application states you are a 501(c)(3) tax-exempt organization and that contributions to your organization are deductible to the donor.

Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states:

The term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states:

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC section 501(c)(3). An organization will not be so regarded if more

than an insubstantial part of its activities is not in furtherance of an exempt purpose.

An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the Regulations states:

The words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(i) of the Regulations states that an organization may be exempt under section 501(c)(3) of the Code if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational or for the prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states, in part:

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Revenue Ruling 68-489, 1968-2 C.B. 210, the Service held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to non-exempt organizations, provided that it retains control and discretion over the use of funds for section 501(c)(3) purposes.

In Revenue Ruling 67-149, 1967-1 C.B. 133, the Service held that an organization that was formed for the purpose of providing financial assistance to several different types of organizations which are exempt from Federal income tax under section 501(c)(3) of the Code was itself exempt under section 501(c)(3) of the Code. The organization carried on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals.

Application of Law:

Although you state in your letter of February 17, 2004 that no financial support will be provided to organizations not exempt under section 501(c)(3), other parts of your application indicate otherwise. It appears your only activity is purchasing golf course equipment and leasing it to your related 501(c)(7) organization,

Revenue Ruling 68-489 indicates a 501(c)(3) organization can distribute funds to organizations that are not exempt under 501(c)(3); however, they must exercise control and discretion over the use of funds to ensure they are used for 501(c)(3) purposes. In contrast, your organization purchases golf course equipment and leases it to your related organization, a 501(c)(7) organization. Therefore, you exert no control and discretion over these assets, which are used to further the purposes of a social club.

It is clear from Revenue Ruling 67-149 that an organization can be classified as a charitable organization under section 501(c)(3) if its sole activity is providing financial assistance to other organizations. However, these organizations must be exempt under section 501(c)(3). In contrast, your organization's sole activity is supporting a 501(c)(7) organization.

Conclusion:

Your sole activity of purchasing golf course related equipment and leasing it to your related social club does not further any charitable purposes. You exert no control and discretion of these assets to ensure they are used for charitable purposes. Although your articles of incorporation meet the organizational test under section 501(c)(3), you do not meet the operational test because your activity does not further a section 501(c)(3) purpose. Accordingly, you are not exempt under section 501(c)(3) of the Code.

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Form **6018**
(Rev. 1-2004)Department of the Treasury-Internal Revenue Service
Consent to Proposed Action - Section 7428
(All references are to the Internal Revenue Code)

(Prepare in Duplicate.)

Case Number 503311018	Name and Address of Organization
Date of Latest Determination Letter	
Employer Identification Number	
Date of Proposed Action Letter APR 29 2004	

I consent to the proposed action relative to the above organization as shown by the box checked below. I understand that Section 7428 of the Internal Revenue Code applies to the proposed action. This consent serves to signify my present intent not to exercise the right to protest the proposed action or the right to seek a Declaratory Judgment. It does not constitute a waiver of those rights.

Nature of Proposed Action

<input checked="" type="checkbox"/>	Denial of exemption
<input type="checkbox"/>	Revocation of exemption, effective (date)
<input type="checkbox"/>	Modification of exempt status from section 501(c)() to 501(c)(), effective (date)
<input type="checkbox"/>	Classification as a private non-operating foundation (section 509(a)), effective (date)
<input type="checkbox"/>	Classification as an operating foundation (section 4942(j)(3), effective (date)
<input type="checkbox"/>	Classification as an organization described in section 509(a)(), effective (date)
<input type="checkbox"/>	Classification as an organization described in section 509(a)(1) and 170(b)(1)(A)(), effective (date)

If you agree to the proposed action, please sign and return this consent. You should keep a copy for your records.

Name of Organization

Signature	Title	Date
Signature	Title	Date

Instructions for Use of this Form

This consent is to be used only for proposed actions subject to declaratory judgment under section 7428 (i.e. actions related to qualification under section 501(c)(3) or foundation status under section 509(a)).

Signature Instructions

This consent should be signed by hand with the name of the organization followed by the signature(s) and title(s) of the person(s) authorized to sign for it. An attorney or agent may sign provided the action is specifically authorized by a power of attorney (POA). If the POA was not previously filed, please include it with this form.